



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Marc E. Elias, Esq.
Jonathan S. Berkon, Esq.
Joseph P. Wenzinger, Esq.
Perkins Coie
700 Thirteenth Street, N.W.
Suite 600
Washington, D.C. 20005-3960

JUL 15 2015

Re: MUR 6394 (Rochelle M. Pingree, *et al.*)

Dear Messrs. Elias, Berkon, and Wenzinger:

On July 9, 2015, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 52 U.S.C. §§ 30114(c)(2), 30116(a)(1)(A), and 30116(f), and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), provisions of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. The Commission previously notified you that it voted to take no further action regarding Magic Carpet Enterprises, LLC. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Kamau Philbert,
Attorney

Enclosure
Signed Conciliation Agreement

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION** 3:10

3
4 In the Matter of)
5)
6 Chellie Pingree) MUR 6394
7)
8 Pingree for Congress and)
9 Anne Rand in her official)
10 capacity as treasurer)
11)
12 S. Donald Sussman)

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14 **CONCILIATION AGREEMENT**

15
16 This matter was initiated via a complaint filed by Charles M. Webster and the Maine
17 Republican Party. The Federal Election Commission ("Commission") found probable cause to
18 believe that Chellie Pingree violated 52 U.S.C. §§ 30114(c)(2), 30116(f), and 11 C.F.R.
19 §§ 100.93(c)(2) and 113.5(b), that Pingree for Congress and Anne Rand in her official capacity
20 as treasurer violated 52 U.S.C. §§ 30114(c)(2), 30116(f), and 11 C.F.R. § 113.5(b), and that
21 S. Donald Sussman violated 52 U.S.C. § 30116(a)(1)(A).

22 NOW, THEREFORE, the Commission and the above-named Respondents, having duly
23 entered into conciliation pursuant to 52 U.S.C. § 30109(a)(4)(A)(i), do hereby agree as follows:

24 I. The Commission has jurisdiction over the Respondents and the subject matter of this
25 proceeding.

26 II. Respondents have had a reasonable opportunity to demonstrate that no action should
27 be taken in this matter.

28 III. Respondents enter voluntarily into this agreement with the Commission.

29 IV. The pertinent facts in this matter are as follows:

30 1. Chellie Pingree was a candidate for re-election to Maine's First Congressional
31 District during the 2010 election cycle.

2. Pingree for Congress (the "Committee") is Pingree's principal campaign committee and is a political committee under 52 U.S.C. § 30101(4). Anne Rand is the Committee's treasurer.

3. In 2010, S. Donald Sussman and Pingree were engaged to be married. Pingree and Sussman were married on June 18, 2011, after the travel at issue. On January 26, 2009, Sussman contributed \$2,400 to the Committee for the 2010 primary election and \$2,400 for the 2010 general election.

4. Sussman is the sole owner of Magic Carpet Enterprises LLC ("Magic Carpet"), a company that elects to be treated as a partnership by the Internal Revenue Service. Magic Carpet owns a model year 2007 Dassault Falcon 2000 EX Easy twin turbojet business aircraft that it leases to Sussman. Sussman has exclusive operational control of the jet, and he pays all costs associated with the jet, including personnel, fixed, and per-flight costs.

Law

5. The Honest Leadership and Open Government Act of 2007 ("HLOGA") amended the Federal Election Campaign Act of 1971, as amended ("the Act"), to prohibit House candidates from making expenditures for non-commercial aircraft travel. 52 U.S.C. § 30114a(c)(2). The term "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office." 52 U.S.C. § 30101(9)(A)(i).

6. The Commission promulgated implementing regulations that became effective January 6, 2010. *See* Explanation and Justification, 74 Fed. Reg. 63,951 (Dec. 7, 2009). The Commission's regulations prohibit House candidates from traveling on non-commercial aircrafts on behalf of their own campaigns, 11 C.F.R. § 100.93(c)(2), and from accepting in-kind

1 contributions in the form of non-commercial air travel. *Id.* § 113.5(b). The regulations explain
2 that HLOGA prohibition on non-commercial air travel applies to a House candidate who is a
3 “campaign traveler,” which includes, “any candidate traveling in connection with an election for
4 Federal office.” *Id.* § 100.93(a)(3)(i)(A).

5 7. HLOGA permits a House candidate to travel on an aircraft owned or leased by the
6 candidate or the candidate’s “immediate family member.” 52 U.S.C. § 30114(c)(3). HLOGA
7 limits immediate family members to a father, mother, son, daughter, brother, sister, husband,
8 wife, father-in-law, or mother-in-law; it does not include “fiancé” among immediate family
9 members. 52 U.S.C. § 30114(c)(3)(B); 11 C.F.R. §§ 100.93(g)(4), 113.5(c)(3).

10 8. The Act prohibits any person from making contributions to any candidate or the
11 candidate’s authorized committee with respect to a federal election that in the aggregate, exceed
12 \$2,400 in the 2010 election cycle. 52 U.S.C. § 30116(a)(1)(A). The Act’s limits also apply to the
13 provision of in-kind contributions in the form of air travel. 11 C.F.R. § 113.5(b).

14 9. A contribution by a limited liability company that is owned by a sole individual and
15 does not elect to be treated as a corporation by the Internal Revenue Service is attributed only to
16 the individual. *See* 11 C.F.R. § 110.1(g)(4).

17 10. The Act prohibits any candidate or political committee from accepting any
18 contribution that exceeds the contribution limits, which were \$2,400 for the 2010 election cycle.
19 52 U.S.C. § 30116(f).

20 Facts

21 11. Sussman’s business regularly involves travel to the metropolitan New York area,
22 where, as of 2010, he maintained an office and residence in Greenwich, Connecticut (roughly
23 one hour north of New York City), and an apartment in Manhattan, New York City. Pingree

occasionally accompanied Sussman on travels to New York City for personal reasons unrelated to re-election campaign activities.

12. In the summer of 2010, the Committee considered planning a re-election fundraiser in New York City. Respondents state that roughly one month prior to the date on which the fundraiser was to be held, Pingree sought from Sussman dates that he would otherwise be traveling to the New York area for business. Sussman identified September 13, 2010, and the campaign scheduled a fundraiser on that day.

13. On September 13, 2010, the day of the fundraiser, Pingree traveled with Sussman on the jet from Portland, Maine to Westchester County Airport in White Plains, New York ("White Plains Airport"). Pingree and Sussman drove to New York City and, among other things, attended a re-election fundraiser at a private residence. After the fundraiser ended, Pingree and Sussman drove back to White Plains Airport and flew on the jet to Washington, D.C.

14. On September 30, 2010, Pingree flew on the jet from Washington D.C. to Portland — Maine and attended a campaign fundraiser and a Democratic candidates event the next day, October 1, 2010. The following day, October 2, 2010, Pingree attended a Seacoast Democrats event and a campaign house party. On October 4, 2010, Pingree flew on the jet from Portland, Maine to Westchester, New York for a nonprofit fundraiser — the only scheduled event on Pingree's calendar for the day. Pingree returned to Washington, D.C. on the jet with Sussman.

15. Sussman paid total costs of approximately \$13,456.80 for both of Pingree's trips on the jet — \$7,974.40 for the September 13, 2010 trip and \$5,482.40 for the September 30 to October 4, 2010 trip.

1 16. Respondents contend that they would have made the trip to the New York area on
2 September 13, 2010, and the trip between Washington, D.C., Maine, and New York from
3 September 30 to October 4, 2010, irrespective of Pingree's re-election campaign. Based on their
4 understanding of the Commission's decision in Advisory Opinion 2002-5, Respondents contend
5 that they understood that any travel expenses that would have existed irrespective of campaign
6 activities would not be considered expenditures and not subject to the Act's restrictions.
7 Accordingly, notwithstanding the new restrictions that HLOGA placed on House candidates
8 campaign travel on noncommercial aircraft, Respondents contend that they believed that
9 Representative Pingree's trips on Sussman's private aircraft were permissible at the time they
10 were made in 2010. Respondents contend that they had a good faith misunderstanding of the
11 HLOGA restrictions and that any violation of the law was inadvertent, and the Commission is
12 unaware of any information to the contrary.

13 V. Solely for the purpose of settling this matter expeditiously and avoiding litigation,
14 with no admission as to the merit of the Commission's legal conclusions or with respect to any
15 other proceeding, Respondents agree not to contest:

16 1. That Chellie Pingree was a "campaign traveler" on the flights in question within
17 the meaning of 11 C.F.R. § 100.93.

18 2. The flights at issue constituted a violation of 52 U.S.C. § 30114 (c)(2) and
19 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), when Pingree travelled on a non-commercial aircraft on
20 trips to attend re-election campaign events.

21 3. The flights at issue constituted an excessive in-kind contribution under 52 U.S.C.
22 § 30116 (a)(1)(A) and 30116 (f).

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Nine Thousand Seven Hundred Fifty Dollars (\$9,750), pursuant to 52 U.S.C. § 30109(a)(5)(A). Respondents will cease and desist from violating 52 U.S.C. §§ 30114(c), 30116 (a)(1)(A), and 30116(f).¹

2. Pingree for Congress and Anne Rand in her official capacity as treasurer will reimburse the \$13,456.80 value of the flights on the jet to Magic Carpet Enterprises LLC and will provide the Commission with proof of the reimbursement.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

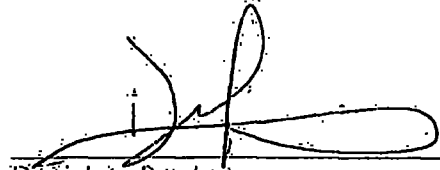
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

¹ The Commission acknowledges that under HLOGA, Pingree may travel on a non-commercial aircraft owned or leased by an "immediate family member," such as her husband.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.


FOR THE COMMISSION:

BY:


Daniel A. Petalas
Associate General Counsel
for Enforcement

7/15/15
Date

FOR THE RESPONDENTS:


Marc Elias
Counsel for Respondents

Date